

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

Charles Hostetler,

Former Director of First
Savings Bank, F.S.B.,
Manhattan, Kansas

Order No. KC-95-06

Dated: June 6, 1995

STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND
DESIST FOR RESTITUTION AND OTHER AFFIRMATIVE RELIEF

WHEREAS, The Office of Thrift Supervision ("OTS"), based upon information reported to it and discovered during the course of its formal investigation of First Savings Bank, F.S.B., Manhattan, Kansas, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Charles Hostetler ("Hostetler"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(b)¹;

WHEREAS, Hostetler, while neither admitting nor denying that grounds exist, desires to avoid the time and expense of such administrative litigation and to settle all issues arising out of the formal investigation; and

WHEREAS, the OTS has determined that it is appropriate and in the public interest to execute this Stipulation and Consent to Issuance of an Order to Cease and Desist for Restitution and Other

1. All references to the U.S.C. are as amended.

Affirmative Relief ("Stipulation") and to issue the attached Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order") and therefore agrees not to initiate any civil or administrative proceedings against Hostetler with respect to all matters, issues and claims encompassed in and discovered during the course of its formal investigation of First Savings Bank, F.S.B., Manhattan, Kansas ("FSB"), Resolution No. TOP 92-08;

NOW, THEREFORE, the OTS and Hostetler hereby stipulate and agree as follows:

1. Jurisdiction.

(a) FSB is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. §1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Hostetler, as a former director of the institution, is deemed to be an "institution-affiliated party" of First Savings Bank, F.S.B., as defined in Section 3(u) of the FDIA, 12 U.S.C. §1813(u), having participated as such within 6 years of the date hereof [See 12 U.S.C. §1818(i)(3)].

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. §1813(q), the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against FSB and/or its institution-affiliated parties. Therefore, Hostetler is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

2. Consent. Hostetler consents to the issuance by the OTS of the accompanying Order. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of 12 U.S.C. § 1818(b).

3. OTS Findings of Fact. The OTS, based upon information discovered during the course of its formal examination, finds as follows:

(a) In July 1983, H&L Investments ("H&L"), a partnership formed by Charles Hostetler ("Hostetler") and Richard Lashbrook ("Lashbrook"), entered into a 99-year leasehold agreement with First National Bank of Manhattan ("First National") to lease certain real estate owned by First National, including a tract upon which was located the bank's Claflin branch facility ("Claflin property"). At the time the leasehold agreement was entered into, Hostetler was serving as president and chairman of the board of directors of First National and Lashbrook was serving as a member of the board of directors of First National. The leasehold agreement was executed on behalf of H&L by Lashbrook and on behalf of First National by Hostetler.

(b) In December 1984, H&L obtained a \$1.2 million permanent loan from Overland Park Savings and Loan Association ("OPS&L"), by mortgaging the Claflin property. The mortgage was executed on behalf of First National by Hostetler, acting as president, and on behalf of H&L by both Hostetler and Lashbrook. First National's grant of a mortgage on the Claflin property was not submitted to or approved by the board of directors ("Board"). The loan proceeds were used by H&L to payoff a construction loan used in developing a

small shopping center and branch banking facility on the Claflin property. Subsequently, First National leased the branch bank facility and made lease payments to H&L.

(c) In May 1986, H&L sold the leasehold to Dee-Kay Developers, Inc., ("Dee-Kay") for the then existing indebtedness and mortgage obligations. The Board was not advised of the sale by Hostetler and only became aware of the transaction after the bank was directed to make its lease payments to Dee-Kay.

(d) Within 30 days after the sale of the property, Dee-Kay made demand on H&L to rescind the transaction due to alleged fraud regarding the amount and regularity of rental payments from tenants occupying improvements on the property. Dee-Kay announced its intention not to make any payments on the OPS&L indebtedness and thereafter refused to make any payments to OPS&L. H&L refused to rescind the agreement and volunteered no mortgage payments. Hostetler, individually, did not make any mortgage payments to OPS&L. Further, Hostetler did not make disclosure to the Board of Dee-Kay's default and demand for rescission, and further, did not present to the Board Dee-Kay's settlement offers.

(e) First National converted to a federal savings bank charter in October 1986 and changed its name to First Savings Bank, F.S.B., Manhattan, Kansas. At the time of the application for conversion filed with the federal thrift regulator, no disclosures were made concerning the Claflin branch transactions, the mortgaging of the institution's asset by H&L, the indebtedness owed to OPS&L, or the default by Dee-Kay and demand for rescission.

(f) In February 1988, OPS&L filed a mortgage foreclosure action on the Claflin property, naming FSB as a party in interest. At the time of the mortgage foreclosure action, no payments of principal or interest had been made on the mortgage indebtedness since approximately May 1986. The Board of FSB did not become formally aware that the mortgage payments had not been made to OPS&L until shortly before the foreclosure action in February 1988, by which time the overall indebtedness, plus accrued interest, had increased to approximately \$1.8 million. In June 1989, a Journal Entry of Judgment and Decree of Foreclosure was filed, with an Amended Journal Entry of Judgment filed on May 11, 1990, by which order the mortgage was foreclosed, and FSB lost all right, title and interest in the Claflin property. The book value of the Claflin property at the time of the foreclosure was \$205,000.

(g) Based on these facts, the OTS finds that Hostetler (who remained a director and an institution-affiliated party of FSB until 1991) breached his fiduciary duty to FSB by failing to rescind the sale with Dee-Kay; failing to timely and formally bring Dee-Kay's allegations and demands to the attention of FSB's Board; failing to ensure that the principal and interest payments were made to OPS&L to discharge the continuing mortgage obligation on the Claflin property; and otherwise failing to undertake any action to protect FSB's ownership interest in the Claflin property.

4. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. §1818(b). Upon its issuance, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. §1818(i).

5. Waivers and Acknowledgements.

(a) Hostetler waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. §1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. §1818(h), or otherwise to challenge the validity of the Order;

(b) Hostetler acknowledges and agrees that his execution of this Stipulation and the entry of the Order are for the purpose of resolving with the OTS any and all matters, issues and claims arising from the formal examination of First Savings Bank, F.S.B., Manhattan, Kansas conducted pursuant to Resolution No. TOP 92-08, and are not intended to nor shall they be construed to have the effect of, limiting the right or authority of any other governmental or administrative agency to initiate or pursue any other action, civil or otherwise, against Hostetler. Further, Hostetler acknowledges and agrees this Stipulation and Order are not intended to nor shall they be construed to have the effect of, limiting the right or authority of the OTS to initiate or pursue any other action, civil or otherwise, against Hostetler for conduct (not involved in the matters in the formal examination) that occurs or is first disclosed to or discovered by the OTS after the entry of the Order.

(c) Hostetler acknowledges that he has read and understands the premises and obligations of this Stipulation and declares that no separate promise or inducement of any kind has

been made by the OTS or its staff to cause or induce him to agree to consent to the issuance of the Order and/or to execute this Stipulation.

(d) Hostetler waives any and all claims against the OTS, its agents and employees, for the award of fees, costs or expenses related to this OTS enforcement matter and the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412.

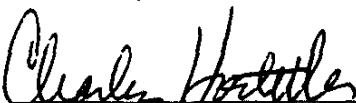
6. Indemnification. Hostetler shall neither cause nor permit the Institution (or any subsidiary thereof) to incur, directly or indirectly, any expense for the amount of the restitution under the Order or any legal (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from the Institution (or any subsidiary thereof) with respect to such amounts. Any such payments received by or on behalf of Hostetler in connection with this action shall be returned to the Institution.


WHEREFORE, Hostetler executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Restitution and Other Affirmative Relief, intending to be legally bound hereby.

By:

Accepted by:

OFFICE OF THRIFT SUPERVISION


Charles Hostetler


Frederick R. Casteel
Regional Director
Midwest Regional Office

UNITED STATES OF AMERICA
Before The
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In the Matter of:)

Charles Hostetler,)

Former Director of First)
Savings Bank, F.S.B.)
Manhattan, Kansas)
_____)

Order No. KC-95-06
Dated: June 6, 1995

ORDER TO CEASE AND DESIST FOR RESTITUTION
AND OTHER AFFIRMATIVE RELIEF

WHEREAS, Charles Hostetler ("Hostetler") has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist for Restitution and Other Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS") acting through its Regional Director for the Midwest Region ("Regional Director"); and

WHEREAS, Hostetler has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b).¹

NOW THEREFORE, IT IS ORDERED THAT:

1. All references to the U.S.C. are as amended.

Restitution

1. Within ten (10) days from the effective date of this Order, Hostetler shall make restitution to First Savings Bank, F.S.B., Manhattan, Kansas ("FSB"), in the following manner:

(a) Hostetler shall pay the sum of Twenty Thousand Dollars (\$20,000) by cashier's or certified check made payable to FSB and delivered to the Enforcement/Litigation Division, Office of Thrift Supervision, 8500 W. 110th St., Suite 400, Overland Park, Kansas; and

(b) Hostetler shall convey to FSB all of his right, title and interest in and to the real property known as the West Branch facility located at 3005 Anderson Street, Manhattan, Kansas, by a deed acceptable to FSB.

2. Hostetler shall ensure that the deed required by paragraph 1(b) above is properly executed by all parties necessary to convey to FSB any and all ownership interest(s) claimed or held by Hostetler in the referenced real property, and any interest claimed or held by his current spouse. Furthermore, Hostetler shall ensure that all interests are conveyed free of any and all mortgages, liens or other encumbrances on the property as of the date of the transfer which are a result of any individual or personal indebtedness he (or any current or former spouse) has incurred; and he shall ensure that his share of all taxes and other assessments are fully paid to the date of the transfer.

3. At the time of the conveyance required by paragraph 1(b) above, Hostetler shall cause a copy of the deed to be delivered to the Enforcement/Litigation Division, Office of Thrift Supervision, at the above-referenced address.

IT IS FURTHER ORDERED THAT:

Affirmative Obligations

4. In the event Hostetler becomes an institution-affiliated party of a federally insured depository institution ("Institution"), within the meaning of Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), he shall comply with the following provisions:

(a) at all times, Hostetler shall avoid placing himself in a position which creates, or which leads to or could lead to, a conflict of interest or the appearance of a conflict of interest; and further, he shall avoid placing his own personal financial interests above those of the Institution of which he is an institution-affiliated party;

(b) whenever Hostetler is presented with a conflict of interest situation (or the appearance thereof) and is uncertain about his duties and responsibilities concerning subparagraph (a) above, he shall obtain, at his own expense, the written advice of counsel independent from the institution of which Hostetler is affiliated regarding his duties and responsibilities with respect to the matter which presents the conflict of interest or the appearance thereof; and further, he shall fully disclose to the board of directors of the institution to which he is or becomes affiliated, the nature of the conflict of interest (or appearance thereof), and cause such disclosure to be recorded in the corporate records of the institution;

(c) at all times, Hostetler shall abstain from voting, or otherwise participating in any manner, on any loans, investments, or business transactions submitted for the approval of management or the board of directors of an Institution of which Hostetler is an institution-affiliated party that involve any corporation, business trust, partnership, or other similar entity in which Hostetler owns or controls, directly or indirectly, any interest;

(d) at least annually, and with a continuing obligation in the event of a change of circumstances, Hostetler shall make full disclosure to the board of directors, and cause such disclosure to be recorded in the corporate records of the institution, regarding any and all loans, investments, partnership interests, stock ownership, and other business relationships (excluding charitable organizations and public or private foundations) that he has outstanding with any person(s) or entity(ies) who is(are) a loan or deposit customer of an Institution of which Hostetler is an institution-affiliated party;

(e) Hostetler shall comply with all policies and procedures of any Institution of which he is an institution-affiliated party regarding the documentation and submission for payment or reimbursement of any business expense or charge that he may incur on behalf of such institution; and

(f) prior to the acceptance of any payment or reimbursement of a business expense or charge from an Institution of which Hostetler is an institution-affiliated party, Hostetler shall ensure that the submission for such payment or reimbursement has been reviewed and approved by the appropriate official(s) of the institution; and further, that all relevant records concerning the amount and business purpose of each such expense or reimbursement has been provided to the Institution.

5. The Stipulation is made a part hereof and is incorporated herein by this reference.

6. This Order is subject to the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), and shall become effective on the date it is issued.

7. Hostetler shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

8. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, FDIA, or the Home Owners' Loan Act ("HOLA"), or as such definition is amended after the execution of this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, FDIA, or HOLA, shall have meanings that accord with their best custom and usage in the savings and loan industry.

9. This Order shall remain in effect until terminated,
modified or amended by the OTS.

OFFICE OF THRIFT SUPERVISION

By:



Frederick R. Casteel
Regional Director
Midwest Regional Office